

BEFORE THE

DEPARTMENT OF TRANSPORTATION

WASHINGTON, D.C.

DEPARTMENT OF TRANSPORTATION

97 FEB -3 PM 4: 56

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Application of

AMERICAN AIRLINES, INC.

under 49 U.S.C. § 40109 for exemption and  
(U.S.-Colombia and Route Integration)  
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: DOCKET SECTION

: OST-97-2081 - 5

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Application of

AEROVIAS NACIONALES DE COLOMBIA, S.A.

for an exemption from U.S.C. § 41301  
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: OST-97-2083 - 5

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Joint Application of

AMERICAN AIRLINES, INC. and  
AEROVIAS NACIONALES DE COLOMBIA, S.A.  
("AVIANCA")  
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: Undocketed

for Statements of Authorization Under 14 C.F.R.  
Parts 207 and 212 (Reciprocal Code-Sharing Services)  
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CONSOLIDATED ANSWER OF  
EMERY WORLDWIDE AIRLINES, INC.

Communications with respect to this  
document should be sent to:

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Senior Vice President & General Manager  
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Washington, D.C. 20004-2595  
(202) 624-2538

February 3, 1997

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

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Application of	:	
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("AVIANCA")	:	
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for Statements of Authorization Under 14 C.F.R.	:	
Parts 207 and 212 (Reciprocal Code-Sharing Services)	:	
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CONSOLIDATED ANSWER OF  
EMERY WORLDWIDE AIRLINES, INC.

American<sup>1</sup> and Avianca have applied jointly for authority to implement an extensive reciprocal code-share arrangement on flights operating between the U.S. and Colombia, and both carriers are also seeking exemption authority to serve

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<sup>1</sup> Common names of carriers are used.

February 3, 1997

additional points in the U.S. in conjunction with that code-share arrangement. This arrangement includes U.S.-Colombia code-sharing on both carriers, intra-U.S. code-sharing, intra-Colombia code-sharing and code-sharing to six South American countries. The requests of American and Avianca for code-share authority and exemptions to serve additional points in each partner's homeland are extra-bilateral. Since Colombia has denied Emery Air's much more limited applications to operate all-cargo charters on the ground that they are not explicitly provided for in the U.S.-Colombia bilateral agreement, there is no justification for granting the extensive extra-bilateral authority sought by American and Avianca.

In support of its position, Emery Air states as follows:

1. The U.S.-Colombia bilateral agreement does not contain a code-share provision, and the Joint Applicants rely on unspecified "reciprocity" in support of their requests for approval of their reciprocal code-share agreement. American also invokes "reciprocity" to support its request to serve 17 points in Colombia, including 13 points that U.S. carriers are not authorized to serve (U.S.-Colombia Air Transport Agreement, Oct. 24, 1956, (as amended)), and Avianca similarly claims that "the overall state of bilateral aviation relations between the United States and Colombia provides a firm basis" for allowing it to serve 27 points which Colombian carriers are not authorized to serve (Avianca Application in Docket OST-97-2083 at 2). Neither American nor Avianca has pointed to a single instance in which Colombia has granted extra-bilateral authority to a U.S. carrier, and it is clear there is no reciprocity sufficient to support the extensive extra-

bilateral code-share and route authority that would allow American and Avianca, with 56% of the combination service departures in the U.S.-Colombia market, to combine their networks and dominate the U.S.-Colombia market. Since the August 22, 1996 MOU expressly prohibits new all-cargo services and did not commit Colombia to permit U.S.-Colombia cargo charters, the applicants cannot claim reciprocity justifies code-share and related exemption authority. Their combined market dominance and Colombia's refusal to permit Emery flights will foreclose Emery from participating in the U.S.-Colombian cargo market. The American-Avianca alliance will raise rates and limit service in the market to the ultimate injury of the shipping public.

2. Over the years, Colombia has turned down a number of Emery Air third/fourth-freedom charter requests. Most recently, the Colombian government denied Emery Air's application to operate a series of four round trip Orlando-Bogota cargo charters. The ground for the denial was that Emery Air's request is "not embodied in the current Bilateral Agreement between the United States and Colombia, and it is not therefore possible to authorize it." (A copy of the Spanish denial and an English translation are attached to this Answer.) In light of Colombia's refusal to permit Emery Air to conduct four round trip charters in one U.S.-Colombia city-pair market because the charters are not within the scope of the bilateral agreement between the two countries, the Department should not even consider granting Avianca and American authority to serve 40 new markets daily. It would be contrary to the public interest to allow Avianca to conduct

extra-bilateral code-share services with a U.S. carrier or to grant Avianca extra-bilateral route authority necessary to implement such code-share services.

3. Avianca also invokes the Department's Cities Program in support of its application for extra-bilateral authority to serve 27 interior points. The cases Avianca cites make clear that an award under the Cities Program requires, inter alia, that "there is a procompetitive agreement in place with the applicant's homeland country and thus a basis does not exist for a traditional aviation trade to obtain benefits for U.S. airlines." (Order 91-11-26 at 1) Avianca cannot meet this standard because the U.S.-Colombia bilateral agreement is restrictive rather than procompetitive ("Although the aviation agreement provides for multiple entry, the Colombian government has not been willing to entertain designations of additional U.S. carriers." Order 92-6-44, at 2). Furthermore, the purpose of the Cities Program is for foreign carriers to operate between their homelands and U.S. communities. It is not applicable to non-operating carriers participating in code-share agreements. (See Order 91-11-26 on the Cities Program and Order 96-2-48, in which the DOT was not persuaded that Malev's proposal to code-share at Atlanta when Delta operated the Atlanta-Budapest route on its own behalf was within the Department's Cities Program.)

Emery Answer  
Page 5

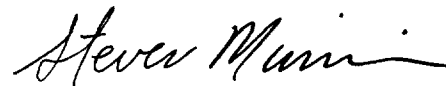
For the foregoing reasons, the Department should deny American's and Avianca's requests for statements of authorization and American's and Avianca's applications for extra-bilateral exemption authority.

Respectfully submitted,

CROWELL & MORING LLP

Handwritten signature of Lorraine B. Halloway in cursive script.

Lorraine B. Halloway

Handwritten signature of Steven A. Mirmina in cursive script.

Steven A. Mirmina

February 3, 1997

# CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing consolidated answer on counsel for American and Avianca and all parties served with their applications in accordance with the Department's Rules of Practice.

A handwritten signature in black ink, appearing to read "Steve Mirmina", written over a horizontal line.

Steven A. Mirmina

February 3, 1997

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**AERONAUTICA CIVIL**

Unidad Administrativa Especial



Santafé de Bogotá D.C., Diciembre 18 de 1996

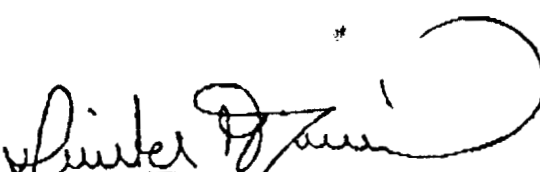
Señor  
DOUGLAS JACKSON  
Planeación de Operaciones  
EMERY WORLDWIDE AIRLINES  
USA

REF: Su solicitud vía AFTN del 12 de diciembre de 1996

Apreciado Señor:

En atención al asunto de la referencia me permito manifestarle en cuanto a su solicitud de realizar vuelos charter de carga entre Estados Unidos y Colombia, que su petición no se enmarca en los Acuerdos Bilaterales vigentes entre Colombia y Estados Unidos, por lo cual no es posible autorizarla.

Sin otro particular, reciba un cordial saludo



HECTOR HERNAN RIOS OSPINA  
Jefe Oficina Transporte Aéreo

C.C. DIRECCION DE OPERACIONES AEREAS

NR. 6664  
MIR



EMERY CHARTERS

513 264 6092  
TEL No. 513-264-6092

Jan 29, 97 15:54 No. 006 P. 03

FROM : ALMASUR LTDA

PHONE NO. : 2239718

Dec. 28 1996 10:39AM P1

**TRANSLATION**  
**AERONAUTICA CIVIL**

December 18, 1996  
Bogotá, COLOMBIA

**Mr. Douglas Jackson**  
Operations Planning  
EMERY WORLDWIDE AIRLINES  
USA

REF: Your request via AFTN dated December 12th, 1996

Dear Sir:

In relation to the matter in reference as to your request to operate cargo charter flights between the United States and Colombia, your request is not embodied in the current Bilateral Agreements between the United States and Colombia, and it is not therefore possible to authorize it.

Best regards,

(signed by)

**HECTOR HERNAN RIOS OSPINA**  
Chief of the Air Transport Office

cc. Operation Areas  
NR. 6664  
MTR